

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-22446-2020 (O&M)
Date of Decision: August 18, 2020**

RAMESH KUMAR @ RITA

..... Petitioner(s)

Versus

STATE OF HARYANA

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioner prays for grant of bail pending trial in FIR No.110, dated 22.08.2018 under Sections 34,354-A(I)(i), 365, 506 IPC and Section 8 of the POCSO Act (Subsequently Section 8 of the POCSO Act was deleted and Section 4 of the POCSO Act was added), registered at Women Police Station Fatehabad, District Fatehabad.

Learned counsel for the petitioner argues that the petitioner has been falsely implicated in the above said FIR, registered at the instance of the complainant, who is the father of the alleged victim. As per the

allegations in the FIR, the complainant had sent his daughter to school on 21.08.2018 at about 8:00 A.M. on a government transport undertaking bus. Principal of the school informed the complainant, that his daughter had not reached school, upon which the complainant proceeded to the school. Principal of the school tracked the bus and on inquiry, the bus driver informed that a girl and a boy had alighted at the bus stand at Khunam to Hanspur road. Whereabouts of the complainant's daughter could not be traced at that time. However, after about four hours the petitioner and co-accused Binder Singh, allegedly left the victim at some distance from the village. The victim returned home and disclosed that the petitioner alongwith Binder Singh had taken her forcibly in a car, molested her and threatened her not to disclose the incident to anyone. Date of birth of the victim is mentioned as 16.07.2003. Statement of the victim under Section 164 Cr.P.C. was recorded on 23.08.2018. She initially refused her medical examination but it was conducted subsequently after one week.

Learned counsel for the petitioner argues that there are no allegations of rape, raised either in the FIR or in the statement of the victim recorded under Section 164 Cr.P.C. Allegations regarding rape were raised on 29.08.2018 for the first time and Section 4 of the POCSO Act was added. It is contended that the version put forth by the prosecution is highly improbable as it is not possible that the petitioner could have forced the victim off the bus in which a number of other people including some students were admittedly travelling. Learned counsel for the petitioner while referring to the statement of the victim (PW5) attached as Annexure P-2, submits that no allegations regarding the petitioner being armed, were ever

raised at the initial stage and that there is no evidence on record to show that there was any element of force, due to which she de-boarded the bus. It is further argued that not much reliance can be placed on the FSL report pursuant to a medical examination conducted one week after the alleged incident. Learned counsel vehemently argues that all the material witnesses including the victim and the complainant stand examined. In fact, the prosecution evidence stands closed. However, due to the unprecedented situation approached by the outbreak of the pandemic COVID-19, no headway is being made in the trial. The petitioner, who himself is a young man aged twenty one, is behind bars from nearly two years and is not involved in any other criminal case. It is, thus, prayed that this petition be allowed.

Learned counsel for the State while opposing the petition submits that serious allegations have been raised against the petitioner, which are duly supported by the FSL report. Moreover, the question of consent or otherwise on the part of the victim is irrelevant, keeping in view the fact that she was a minor at the time of the incident. It is, however, verified by learned counsel for the State on instructions from Sub-Inspector Shakuntla that the petitioner is not involved in any other criminal case and he has been in custody since 29.08.2018.

There is no allegation that the petitioner is likely to abscond or influence witnesses. Due to the situation created by the outbreak of the pandemic COVID-19, trial in this case is not likely to be concluded in the near future. No useful purpose would be served by keeping the petitioner incarcerated any longer.

Keeping in view the facts and circumstances of the case but without commenting upon or expressing any opinion on the merits thereof, this petition is allowed. The petitioner be released on bail pending trial subject to his furnishing requisite bail bonds and surety to the satisfaction of the learned Trial Court/Duty Magistrate.

It is made clear that the petitioner shall not directly or indirectly try to contact the complainant, prosecutrix/any of her family members or witnesses in this case. Any such infraction on the part of the petitioner may entail cancellation of her bail.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

18.08.2020

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No